



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **201040019**
Release Date: 10/8/2010

Date: July 12, 2010

UIL: 501.04-07; 528.05-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:
1120

Tax Years:
All

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(4). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

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1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Rob Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: May 13, 2010

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

A = State of Incorporation
B = Date of Incorporation
C = Residential Development
D = Developer
E = Owner 1
F = Owner 2
G = Declaration adopted date

UIL:

501.04-07
528.05-00

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(4). The basis for our conclusion is set forth below. This letter supersedes our letter dated April 1, 2010, which has the incorrect employer identification number.

Issue

Do you qualify for tax exemption under section 501(c)(4) of the IRC?

Facts

You were incorporated under the laws of the State of A on date B. The Articles of Incorporation provides, in part, that your purposes are the following:

To operate, manage, improve, repair, own, acquire, sell, assign, mortgage, hypothecate, and otherwise deal in real and personal property and its appurtenances and fixtures, and to

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transact all lawful business for which corporations may be organized under A Non-Profit Corporation Law 1988.

Your Bylaws state that there are two types of members, voting members and nonvoting members. Nonvoting members are those who are the record fee simple titleholders of homes. Nonvoting members shall have rights and privileges but not voting rights. The initial voting member is your developer, D. Your developer is also referred herein as "Declarant", whose owners are E and F. You are organized and operated by E and F. They are your managers and officers. E and F are your president and secretary/treasurer, respectively.

You submitted Form 1024, Application for Recognition, on February 5, 20XX. Your application indicates that you will mow and maintain common areas, pay for snow removal and will work to preserve the appearance of the common area in order to make the development an appealing place of residency for those in the community. Your Bylaws defines "Common Area" as all real property owned by you for the use and enjoyment of the unit owners.

Your Bylaws state that the Declarant owns the tracts of land and common areas, and that the Declarant shall transfer control and ownership to the homeowners not later than: (a) sixty (60) days after the Declarant has sold the last townhouse to its final retail purchaser; or (b) five (5) years after the date of the Declaration of Protective Covenants (the "Declaration"), whichever is later; and each homeowner shall thereafter be a voting member and voting privileges cannot thereafter be suspended or removed as long as one remains a homeowner. Your Declaration was adopted on date G. The Declaration states that there are 19 single-family living units in addition to the common areas. In your recent correspondence, you state that six (6) townhouse units have been sold and five (5) townhouse units remain to be sold.

According to the Declaration, you enforce covenants with regard to repair and maintenance of the common areas, including parking lots, roadways, landscaping, sidewalks (including snow removal), the cutting of grass and storm water drainage and the maintenance, repair or replacement of the utilities servicing the residential development known as C, including but not limited to water, electric, cable television, sewer lines located in the common areas.

The organizational activities will be funded solely through membership assessments. Each unit owner will be assessed equally for the fees and maintenance of the common areas. All expenses will be used for common area maintenance, snow removal, landscaping, repair and replacement of utility services within the common areas as set forth in the Bylaws, the Declaration, and the Articles of Incorporation.

Law

Section 501(c)(4) of the Code provides in part, that civic leagues or organizations not organized for the profit but operated exclusively for the promotion of social welfare qualify for recognition of exemption.

Section 1.501(c)(4) -1(a)(2)(i) of the Income Tax Regulations provides, in part, that:

...An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about betterments and social improvements....

Revenue Ruling 74-99, 1974-1 C.B. 131 lists the three criteria a homeowners' association must meet in order to qualify for exemption under section 501(c)(4) of the Code. The homeowners' association:

1. must not conduct activities directed to the exterior maintenance of private residences;
2. it must serve a "community " which bears a reasonable recognizable relationship to an area ordinarily identified as governmental; and
3. the common area or facilities it owns and maintains must be for the use and enjoyment of the general public

The ruling holds that where an organization's stated purposes are to administer and enforce covenants for preserving the architecture and appearance of a given real estate development, and to own and maintain common green areas, a prima facie presumption exists that the organization is primarily formed and operated for the individual business or personal benefit of its members and as such does not qualify for exemption under section 501(c)(4).

Revenue Ruling 80-63, 1980-1 CB 116, clarifies Revenue Ruling 74-99, 1974-1 CB 131. This ruling states that, although the area represented by an association may not be a community within the meaning of that term as contemplated by Rev. Rul. 74-99, supra, if the association's activities benefit a community, it may still qualify for exemption. For instance, if the association owns and maintains common areas and facilities for the use and enjoyment of the general public as distinguished from areas and facilities whose use and enjoyment is controlled and restricted to members of the association then it may satisfy the requirement of serving a community.

Rev. Rul. 74-17, 1974-1 C.B. 130 describes an organization formed by the unit owners of a condominium housing project to provide for the management, maintenance, and care of the common areas of the project, as defined by State statute, with membership assessments paid by the unit owners does not qualify for exemption.

Application of Tax Law

You are not described in section 501(c)(4) of the Code because you are organized to benefit your developer and its owners, who are also your managers and officers. Therefore, you are not exclusively operating for the promotion of social welfare of the community.

You are not described in section 1.501(c)(4) -1(a)(2)(i) of the Income Tax Regulations because you are operated primarily to help the developer, whose owners are your founders, managers and officers, to sell townhouse units. Thus, you are not operated for the purpose of bringing about the betterments and social improvements of the community.

You are distinguished from the organization described in Revenue Ruling 74-99, *supra*, because you do not meet the community definition that bears a reasonable recognizable relationship to an ordinary identified as governmental and you do not own the common areas to which you provide repair and maintenance. You do not resemble a community as defined in Rev. Rul. 79-99 and clarified in Rev. Rul. 80-63, because you provide maintenance to the common areas that you do not own and because your activities primarily benefit your developer, its owners and buyers.

You are similar to the organization described in Revenue Ruling 74-17 because you are providing maintenance to common areas around the townhouse units for the benefits of the unit owners and for the developer. Your income is composed of membership assessments enforced by covenants and is primarily used to provide direct economic benefits to these unit owners and the developer, whose owners are your officers and managers by improving the overall development and any benefits to the larger community are minor and incidental in nature. Furthermore, your developer has the sole ownership over the common areas that you maintain, still has units available for sale, and has exclusively control over your operation. Maintenance expenses used to maintain the common areas are directly benefiting your developer in an effort to sell its remaining townhouse units.

Applicant's Position

You state that your activities are similar to those described in Revenue Ruling 72-102 1972-1 CB 149. You contend that you qualify for exemption under section 501(c)(4) of the Code because :

- a. You are operated to further the general welfare of a community.
- b. No maintenance will be done for the benefit of any one individual member.
- c. You were formed to enforce the covenants for preserving the appearance of the development and its activities to benefit the community at large.
- d. The areas you maintain are the streets, sidewalks, common areas and parking areas within the development. These areas are all available to the general public.

You state that you do not only maintain the areas around the occupied units, which would benefit the individual residents, but maintain the entire development benefiting all those living in or visiting the community. You further state that your activities make the development a more appealing place of residency for those who live in the community.

Service's Position

You are unlike the organization described in Revenue Ruling 72-102, *supra*, because you are organized and operated by and for the benefits of the developer, whose owners consist of your two officers and managers. The developer currently owns the common areas where you provide maintenance. Individual homeowners are nonvoting members; they have no voice in your operation. The developer will not turn over the operation as well as the ownership of the common areas to you and individual homeowners will not become voting members until (a) sixty (60) days after the last townhouse has been sold; or (b) five (5) years after the date of the Declaration, whichever comes later. Thus, you are formed to help the developer sell its real estate development and to enhance the property value of the unit owner rather than to promote the social welfare of the community as described in section 501(c)(4).

Conclusion

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(4) of the Code and its applicable Income Tax Regulations. Based on the information submitted, we have concluded that you are not an organization described in section 501(c)(4) of the Code because you are not operated exclusively for one or more exempt purposes set forth in section 501(c)(4) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter.

We will consider your statement and decide if that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether

the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter to you. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert S. Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure, Publication 892

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